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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 15th July, 2021

No. 13/1/9275-HII(2)-2021/7407.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 116/2012, dated 28.05.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh between :

RAM LAL, S/O SHRI RAGHUBIR SINGH, R/O VPO SHAMGARH, TEHSIL NILOKHERI, DISTRICT KARNAL, HARYANA THROUGH SHRI N.K. NAGAR & SHRI D.K. NAGAR - AUTHORISED REPRESENTATIVES (Workman)

AND

GENERAL MANAGER, HARYANA ROADWAYS, CHANDIGARH (Management), referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9275-HII(2)-2012/19786, dated 17.10.2012.

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9275-HII(2)-2012/19786, dated 17.10.2012 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

"Whether the services of Ram Lal S/o Raghubir Singh R/o VPO Shamgarh, Tehsil Nilokheri, District Karnal, Haryana through N.K. Nagar & D.K. Nagar, Authorised Representatives were terminated illegally by the General Manager, Haryana Roadways, Chandigarh; if so, to what effect and to what relief he is entitled to, if any ?"

2. Shri Ram Lal (hereinafter called 'workman') had served demand notice dated 20.03.2012 upon the General Manager, Haryana Roadways, Chandigarh (hereinafter called 'management') under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act'). Upon notice, the workman appeared through his representative. Demand notice was ordered to be treated as statement of claim. During the pendency of the reference, the present reference was adjourned *sine die* by the then Presiding Officer vide order dated 13.09.2017, as per directions of the Hon'ble Punjab & Haryana High Court passed in CWP No. 8468 of 2017 titled Jarnail Singh Versus Presiding Officer, Industrial Tribunal, Patiala & Others vide order dated 25.04.2017, for exhausting the remedy of appeal provided under the service rules. Thereafter, an application for revival of the reference and for placing on record copy of appeal and copy of order of the appellate authority dated 01.08.2019, as per order of this Court dated 13.09.2017 was filed and after revival of the reference an application for amendment of claim statement filed by the workman, which was allowed vide order dated 21.11.2019.

(505)

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3. As per amended claim statement, case of the workman in brief is that after scrutinizing all his testimonials inclusive of driving licence the workman was selected and appointed as Driver in the year 1994 through employment exchange. He was recommended for basic training with effect from 01.04.1994 to 12.05.1994 and after successful completion of training under the General Manager, Driving Training Institute, Murthal (Sonapat), a certificate No.779 dated 12.05.1994 was issued to him. The workman further had successfully completed the programme "Fuel Economy & Road Safety" conducted by the Driving Training Institute, Murthal from 17.10.1994 to 29.10.1994. Work & conduct of the workman throughout remained unblemished. On 31.01.2000 the workman was on duty with bus No.HR-37-7036 enroute Kalka-Delhi. When the bus reached near Pipli Chowk, at that place right side i.e. Driver side road was closed for maintenance work and he was plying his vehicle very cautiously at a slow speed because of closure of other side road and also for the reason that traffic was coming on single operational left side road, however, suddenly a maruti car No.HR-12C-7534 driven in a zig-zag manner came from the opposite direction, at wrong side and banged with the bus resultantly Shri Jai Singh and Shri Zile Singh Driver and owner of Maruti car died at the spot. Consequent to the accident an FIR No.30 dated 31.01.2000 under Section 279, 304 IPC, PS Sadar Thanesar was registered against the workman. After getting the information of the occurrence one Shri Arjun Dass Sahu - Sub-Inspector, Bus Stand Ambala Cantt., who was not an eye witness of this occurrence allegedly went to the spot and submitted his report dated 02.02.2000 wherein besides mentioning of above stated facts he had mentioned that he had not found any marks of application of brake at the place of occurrence, which means no effort was made by the Driver to avoid the mishap and that had the bus Driver applied brakes the accident could have been avoided. On the basis of above said report of Shri Arjun Dass Sahu, the workman was served with a charge sheet bearing No.11038/ACT dated 08.05.2000. The workman submitted his reply explaining that he was driving his bus at left side and Maruti car banged with his bus from wrong side so suddenly that despite his best efforts by applying brakes he could not avoid mishap and the accident had not taken place because of any rash or negligence on his part but on account of rash and negligent driving of offending Maruti car. Shri Vishwa Mittar - Conductor No. 256 of Haryana Roadways, Chandigarh Depot Kalka, who was working as Conductor with the bus in question on the day of accident vide his statement dated 31.01.2000 had disclosed that Driver suddenly applied brakes and halted but when he alighted from the bus he had seen Maruti Car HR-12-C-7534 hit the bus from wrong side but Shri Vishwa Mittar only eye witness was not cited as witness in the charge sheet whereas two persons namely Shri Balbir Singh and Shri Arjun Dass, who did not eye-witnessed the occurrence were made as witnesses. The General Manager without taking into consideration anything had appointed an Inquiry Officer to go into the charges. Prior thereto an MACT case was filed in which the department pleaded a defense that instead of the workman the Driver of offending Maruti car was rash & negligent. In criminal case No.46/1 of 2000 i.e. relating to this accident the workman was acquitted of the charges by the Court of Shri Vivek Bharti - Additional Chief Judicial Magistrate, Kurukshetra vide judgment dated 05.08.2004. The Inquiry Officer did not hold the inquiry in a fair & proper manner and no adequate opportunity to defend was provided to the workman, who completely ignored the statement of Shri Vishwa Mittar, only eye-witness of the occurrence and held the workman guilty of the charges solely on the statement of Shri Arjun Dass, who was not an eye-witness and for the reason that FIR is registered against him. Thereafter a show cause notice was issued to the workman and his services were terminated for allegations not mentioned in the charge sheet or proved in the inquiry by the General Manager, Haryana Roadways, Chandigarh vide order bearing Endorsement No.4539-41/A4/E3, dated 19.06.2003. The workman challenged the order of termination of his services vide Civil Suit No. 363, dated 06.09.2003. The Court of Shri Atul Marya-CJJD, Chandigarh vide judgment and decree dated 02.01.2008 decreed the suit in favour of the workman holding order of termination is bad in law. Thereafter the State of Haryana preferred an appeal No.43 of 13.02.2008. Shri Gian Chand Garg - Additional Sessions Judge, Chandigarh vide his judgment dated 25.10.2010 reversed the decision with a direction to the appellant-management to hold fresh inquiry to be concluded within six months from the date of receipt of the order, in which allegation of driving license of workman be included with the question as to whether the workman at the time of accident was having a valid driving license or not.

A new charge sheet was issued to the workman after about five months *vide* Memo No.5451/ECD, dated 08.03.2011. In this charge sheet Shri Balbir Singh - Ex-Conductor No.29 (Yard Master) and Shri Arjun Dass - Ex-Sub-Inspector were cited as witnesses whereas the documents on the basis of which the charges intended to prove and find mentioned in the list of documents are (i) FIR, (ii) Report of Shri Arjun Dass - Ex-Sub-Inspector and (iii) Report of Yard Master. No prudent person can prove allegation whether Shri Ram Lal - Driver, at the time of accident was having a valid driving license or not either from the above cited witnesses or from the documents mentioned in the above referred list. The workman submitted his reply to the charges but the General Manager without taking into consideration any of the contentions made therein had appointed Accounts Officer as an Inquiry Officer to go into the charges. The Inquiry Officer in this case did not hold the inquiry in fair & proper manner and no adequate opportunity to defend was provide to the workman. The Accounts Officer had shown his inability to hold the inquiry so *vide* letter bearing endorsement No.15306-08/ECD dated 01.09.2011 Traffic Manager was appointed as Inquiry Officer to hold and complete the inquiry within one month. This letter was delivered to the workman only on 10.09.2011 and as holder of the post of Traffic Manager was not keeping good relationship with the workman, the workman *vide* his written communication dated 12.09.2011 sent through registered post had requested the General Manager to appoint anyone else as Inquiry Officer as he did not except justice from Traffic Manager. Thereafter the workman received the impugned order terminating his service bearing endorsement No.16753-54/ECD dated 12.09.2011. *Vide* application dated 05.11.2011 information was sought under RTI Act, 2005 from the office of G.M. Hr. Chd. under registered post by Shri N. K. Nagar, Representative of the workman but the same was not even responded to. Against order of punishment dated 19.09.2011 the workman filed an appeal and the same has been dismissed illegally without considering the factual and legal submissions made by the workman in appeal. Impugned order terminating the services of the workman bearing endorsement No.16753-54/ECD dated 12.09.2011 is illegal and deserves to be set aside on the grounds that the Inquiry Officer had explained the procedure of inquiry to the workman despite knowing fully that the workman is not literate enough to defend himself in the inquiry nor had ever advised him of his right to be assisted by a co-worker. No Presenting Officer was appointed in this case in violation of Rule 7(5) Ist proviso and the Inquiry Officer acted as Presenting Officer as well as judge. Copies of neither statements of the witnesses was supplied to the workman nor that of day to day proceedings conducted in the inquiry rendering the workman a handicap to reap mileage out of it. Despite the fact that it was ordered that inquiry to be concluded within six months a new charge sheet was issued to the workman after about five months. In charge sheet Shri Balbir Singh - Ex-Conductor No.29 (Yard Master) and Shri Arjun Dass - Ex-Sub-inspector are cited as witnesses whereas the documents on the basis of which the charges intended to prove and find mentioned in the list of documents are FIR, report of Shri Arjun Dass and report of Yard master. No prudent person can prove allegation whether the workman, at the time of accident, was having a valid licence. It is apparent the Inquiry Officer in an anxiety to bring home the alleged guilt of the workman had procured foreign material from outside source or relied upon his alleged personal knowledge to hold that driving license of the workman is fake which is not permissible in law and offends principles of natural justice. The findings of the Inquiry Officer are perverse who completely ignored the statement of Shri Vishwa Mittar, only eye witness of the occurrence and held the workman guilty of the charges solely on the statement of Shri Arjun Dass who was not an eye witness and for the reason that FIR is registered against the workman, further completely ignoring that even Shri Arjun Dass had stated Maruti car hit the bus from wrong side and this accident has taken place on account of rash & negligent driving of Maruti Driver. The Traffic Manager i.e. subsequent Inquiry Officer did not communicate any letter to the workman intimating him every to participate in the inquiry. The Traffic Manager with whom the workman was not having cordial relationship and from whom he was not expectant of justice could not be

expected to act in fair and proper manner. The workman was not afforded opportunity to lead his defence. Neither the workman was issued with any show cause notice nor is supplied with copy of the inquiry report prior to infliction of impugned punishment or thereafter to date. No personal hearing was afforded to the workman prior to or even after passing of impugned order of termination dated 12.09.2011. Since the first order of termination dated 17.12.2002 was set aside and finally order of termination is passed *vide* order dated 12.09.2011, at least the workman is entitled to wages during this entire period. The license was issued to the workman under Motor Vehicle Act, 1939 but charge sheet was issued under 1988 Act. Allegations against the workman are illegal and misconceived under rules, only condition is that no one can drive transport vehicle who is less than 20 years of age but there is no such condition that one cannot obtain heavy license before 20 years. The workman was more than 20 years of age at the time of alleged accident. The workman was issued driving license by competent authority and the same has not been cancelled by any competent authority rather the same was renewed from time to time by the competent authority till the date fresh driving license was issued by the licensing authority RTA, Karnal on 28.11.2003. The workman is unemployed after his illegal termination. Ultimately, it is prayed that the termination order be set aside and the workman be reinstated with continuity of service and full back wages.

4. Learned Assistant District Attorney for the management made the statement that previous written statement filed in this case be read as amended reply. The management filed written statement raising preliminary objection that the claim statement is not maintainable. This Court cannot interfere in the punishment awarded in disciplinary proceedings unless the prescribed procedure has not been properly followed. The services of the workman were terminated on 17.02.2002 and against this termination he filed the civil suit which was decided on 02.01.2008 in favour of the workman. Against the decree passed by the Civil Judge, Chandigarh an appeal was preferred by the State Government in the Court of Additional District & Sessions Judge, Chandigarh, which was decided on 25.10.2020, whereby it was directed to the department to hold a fresh inquiry as to whether the workman was holding valid driving license at the time of accident within a period of six months and judgment & decree of the Trial Court was set aside. In compliance of order passed by the appellate Court, the department held the fresh inquiry in accordance with the departmental rules and found that Shri Ram Lal, Driver is guilty for holding invalid driving license because the same was obtained by him in the age less than 17 years. Before completion of inquiry the workman filed the RSA against the judgment decree dated 25.10.2010 in the Hon'ble Punjab & Haryana High Court which is still pending. On merits, it is pleaded that driving license of the workman was not verified inadvertently at the time of appointment but the same was proved invalid lateron. According to the report of Traffic Manager, Haryana Roadways, Chandigarh, the date of birth of the workman is 20.08.1966 and he obtained driving license on 17.07.1983. Moreover, the Court of Motor Vehicle Claims Tribunal also held that the driving license of the workman is fake. In the present case, it is not the question before the Court that how accident took place but the main issue in this case is whether the workman was holding a valid driving license at the time of accident and the same has been proved in the departmental inquiry as well as by the MACT. The MACT had passed the award against the department due to fake driving license of the Driver and due to this reason the State of Haryana was burdened with heavy amount of compensation of ₹ 11,71,733/-. Although the workman was acquitted from criminal charges in accident case but the question of validity as to driving license was not decided by the criminal court. A fresh inquiry, as ordered by the Court, was held in proper manner in accordance with the departmental rules. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

5. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the reference is not maintainable ? OPM
3. Relief.

6. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Harpeet Singh - Clerk as MW1. Learned Assistant District Attorney for the management tendered into evidence photocopy of award of Motor Accident Claim Tribunal, Rohtak and closed the evidence.

7. I have heard learned representative for the workman and learned Assistant District Attorney for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No.1 & 2 :

8. Both these issues are taken up together to avoid repetition of discussion for the sake of convenience. Learned representative for the workman examined the workman as AW1, who deposed that after scrutinizing all his testimonials including driving license was appointed as Driver in the year 1994. He was recommended for basic training with effect from 01.04.1994 to 12.05.1994 and after successful completion of training a certificate was issued to him. He had further successfully completed the program "Fuel Economy & Road Safety" conducted by the Driving Training Institute, Murthal from 17.10.1994 to 29.10.1994. His work & conduct remained unblemished. He further deposed that on 31.01.2000, he was on duty enroute Kalka-Delhi and when the bus reached near Pipli Chowk, driver side of road was closed for maintenance work so he plied his vehicle very cautiously at a slow speed as traffic was coming on single operation left side road. Suddenly a Maruti Car driven in zig zag manner came from the opposite direction and banged with the bus resultantly Shri Jai Singh and Shri Zile Singh, Driver & owner of Maruti Car died at the spot and a false FIR No.30 dated 31.01.2000 under Section 279, 304 IPC, PS Sadar Thanesar was registered against him though he was not at fault. Shri Arjun Dass Sahu - Sub-inspector submitted report without verification of facts that he had not found any marks of application of brake at the place of occurrence and if the bus Driver would have applied brakes, the accident could have been avoided. On the basis of report, he was served with a charge sheet, to which he submitted his explanation that the Maruti car banged with bus from wrong and in spite of his best efforts by applying brakes he could not mishap and the accident had not taken place due to rash or negligence driving of the offending Maruti Car. Shri Vishwa Mittar - Conductor No.256, who was working as Conductor with the bus *vide* his statement dated 31.01.2000 had disclosed that the deponent had suddenly applied brakes and halted the bus but when he alighted from the bus he had seen Maruti car hit the bus from wrong side. He further deposed that the General Manager without taking into consideration true facts appointed the Inquiry Officer. In criminal case No.46/1 of 2000 i.e. relating to the accident he was acquitted honourably of the charges by the Court of Shri Vivek Bharti - Additional Chief Judicial Magistrate, Kurukshetra *vide* judgment dated 05.08.2004 Exhibit 'W1'. The Inquiry Officer did not hold the inquiry in a fair & proper manner and no adequate opportunity to defend was provided to him and completely ignored the statement of Shri Vishwa Mittar, only eye witness of the occurrence. A show cause notice was issued to him which was duly replied but without considering his defence General Manager, Haryana Roadways, Chandigarh *vide* order bearing Endorsement dated 19.06.2003 terminated his services. He challenged the order of termination of his services by filing Civil Suit No.363 dated 06.09.2003, which was decreed in his favour holding order of termination is bad in law. The State of Haryana preferred an appeal, in which direction was given to the management to hold

fresh inquiry to be concluded within six months from the date of receipt of judgment by including the charge of validity of driving license at the time of accident. Copy of that order was received by the management on 15.11.2010 and fresh inquiry was to be completed before 15.05.2011 but new charge sheet was issued after about five months on 08.03.2011. In this charge sheet Shri Balbir Singh - Ex-Conductor No.29 (Yard Master) and Shri Arjun Dass - Ex-Sub-inspector are cited as witnesses whereas documents on the basis of which the charges intended to be proved and find mention in the list of documents are FIR, report of Shri Arjun Das - Ex-Sub-Inspector and report of Yard Master but none of the witnesses were eye-witnesses. He also deposed that he submitted his reply to the fresh charge sheet but the General Manager without taking into consideration any of the contentions, appointed the Accounts Officer as an Inquiry Officer to go into the charges. The Inquiry Officer did not held the inquiry in a fair & proper manner and no adequate opportunity to defend was provided to him. Later on the Accounts Officer had shown his inability to hold the inquiry and the Traffic Manager was appointed as Inquiry Officer. As the holder of the post of Traffic Manager was not keeping good relationship with him, he *vide* his written communication dated 12.09.2011 sent through registered post requested the General Manager to appoint anyone else as Inquiry Officer. The Inquiry Officer held the inquiry at his back and submitted his inquiry report to another Inquiry Officer in place of to punishing authority. Thereafter some days he received the impugned order terminating his services bearing endorsement dated 12.09.2011. *Vide* application dated 05.11.2011 information was sought under RTI Act, 2005 from the Office of G.M., HR, Chd. but the same was not supplied. Copy of application is Exhibit 'W2'. Against the order of punishment dated 19.09.2011 he filed an appeal, which was dismissed illegally without considering the factual and legal submissions made by himself in the appeal. Copy of ground of appeal and copy of order on appeal is Exhibit 'W3' and 'W4'. He further deposed that he was not provided any assistance of co-worker nor made aware about this right. No Presenting Officer was appointed during the departmental inquiry and the Inquiry Officer examined the witnesses as well as cross-examined the witnesses. As per order of the Court the fresh inquiry proceedings were to be concluded within six months from the receipt of judgment of the Court which was received by the management on 15.11.2010 but the inquiry proceedings were concluded on 12.09.2011. He was honourably acquitted by the criminal Court *qua* the same allegations. He was not given opportunity of leading defence evidence and not supplied copy of inquiry report. At the time of alleged accident he was holding valid license issued by the competent authority and the same was never cancelled till date by any authority. All the Drivers, who were having similar driving license as issued by other state authority, were given chance to obtain fresh license from the authority of the State as such he obtained fresh driving license on 28.11.2003 from Licensing Authority RTA Karnal. Copy of driving license is Exhibit 'W5'. The MACT amount was paid by the insurance company so charge sheet misconceived as no loss was caused to the department. The charge sheet was issued to him under Motor Vehicle Act, 1988 whereas he was issued license under Motor Vehicle Act, 1938. The license as issued on 28.11.2003 was issued by the RTO Dilbrugarh Assam but inquiry was conducted from RTO, Panchkula.

9. Learned representative for the workman has argued that in the year 1994 name of workman was sponsored by Employment Exchange for the post of Driver in Haryana Roadways. Thereafter the workman was interviewed by the Departmental Selection Committee and was found fit for appointment after his driving test and after verification of his driving license and other documents. He was fully eligible to drive transport vehicle under the Motor Vehicle Act 1988. After recommendation by selection committee and before giving appointment the workman was sent for training to Driving Training Institute, Murthal and he successfully completed the training. Again he was deputed for training on "Fuel Economy & Road Safety" during the period 17-10-94 to 29-10-94. The workman was performing his duties with diligence and devotion throughout.

10. It is argued that on 31.01.2000 the workman was on duty on Kalka-Delhi Route and when he reached near Pipli Chowk half road of driver side (right side) was closed for repair, therefore it was a single way road and a Maruti car coming from opposite side was being driven in a rush and negligent manner dashed against the bus of the workman resultantly, FIR No. 30 of 31.01.2000 was registered against the workman. Thereafter trial Court of JMFC, Kurukshetra acquitted the workman *vide* judgment dated 05.08.2004, copy of which Exhibit 'W1'. After registration of FIR on same allegation the workman was terminated from service

vide order dated 19.06.2003, without awaiting result of criminal case. Learned representative for the workman placed reliance on judgment **G. M. Tank Versus State of Gujarat & Another, 2006(3) SCT 252(SC) and Punjab State through its Collector & Another Versus Ex.Constable Gulzar Singh, 2012(3)SCT 579 (P&H)** in which it is held that once the workman has been acquitted in criminal case, on same set of allegation, the punishment order of termination cannot be allowed to stand. Further reliance is placed on case as reported in **Capt. M. Paul Anthony Versus Bharat Gold Mines Limited, 1999 AIR (SC)-1416**.

11. It is further argued that against the order of termination dated 19.06.2003 the workman filed civil suit in Civil Court at Chandigarh and that civil suit was decreed in favour of the workman *vide* judgment and decree dated 02.01.2008. Against which the respondent had filed appeal, which was partly allowed on 25.10.2010 and the respondents was directed to hold fresh inquiry by including the charge "*Whether workman was holding valid driving license at the time of accident on 31.01.2000 ?*". Fresh inquiry was to be completed within six months from the receipt of certified copy of the judgment. Fresh charge-sheet was given on 08.03.2011 and inquiry proceedings was completed on 12.09.2011 after the expiry of the time given by the court. He placed reliance of citation **The State of Tamil Nadu Versus T. Ranganathan, 2010(9)SCT 815 (Madras) (DB)** that if court has given specific time to complete the departmental Inquiry the same has to be completed within stipulated period and any proceedings beyond the said period granted by the court are without jurisdiction.

12. It is further argued that after issuance of the charge-sheet the Accounts Officer was appointed as Inquiry Officer. The Accounts officer had shown his inability to conduct the inquiry therefore the Traffic Manager was appointed as Inquiry Officer, who conducted the inquiry at the back of the workman and submitted his report to the earlier Inquiry Officer and earlier the Inquiry Officer considered the material collected by the Traffic Manager at the back of workman, for submitting inquiry report against workman. Learned representative for the workman has placed reliance on citation **Manjit Singh Versus State of Haryana & Others, 2011(3) SCT 78 (P&H) and State of Assam & Another Versus Mahendra Kumar Das & Others, 1970 SLR 444 (SC)** wherein it is held that any material collected at the back of the delinquent cannot be considered for holding him guilty. He argued that the services of workman was terminated *vide* order dated 12.09.2011. Before passing of order of termination the copy of the inquiry report was not supplied to workman so the workman was denied his right to make a representation against the findings of inquiry officer. No opportunity of personal hearing was given to workman. The workman had stated all these facts in his affidavit in evidence but the management had not cross-examined him on these points. Moreover the inquiry file placed on record also does not reveal that inquiry report was ever supplied to workman and he was given chance to make representation against the findings of Inquiry Officer or chance of personal hearing before passing the order of punishment which was mandatory. He placed reliance on citations **Union of India & Others Versus Mohd. Ramzan Khan, 1991(1) SCT 111(SC); Sadhu Ram Versus State of Punjab, 2005(2) SCT 295 (P&H) and Parminderjit Singh & Others Versus Shiromani Gurudwara Prabandhak Committee, Amritsar through its Secretary & Others, 2019(3) PLR 297 (P&H)**.

13. It is further argued that as regards charge of validity of the driving license is concerned findings of the Inquiry Officer are misconceived and wrong. The court while deciding the appeal had ordered to add the charge "*Whether workman was holding valid license at the time of accident on 31.01.2000 ?*". The submission of the workman is that he got driving license on 17.07.1983 from licensing authority Dibrugarh (Assam) and same was renewed by licensing authority Karnal in 1993 after verification, as admitted by MW1. It is further argued that when license was renewed in the year 1993, the age of workman was 27 year and workman was appointed in Haryana Roadways in the year 1994 and at the time of appointment age of workman was 28 years. The accident took place in the year 2000 when age of workman was 34 years. So the license of workman was never cancelled by the license issuing authority as well as by renewing authority. It is settled law as held in judgment as reported **National Insurance Co. Ltd. Versus Sucha Singh, 1994(1) RRR 439 (P&H) (DB)** that when eve fake license have been renewed by competent authority the license becomes, valid because at the time of renewal of license same verification are repeated as are taken at the time of issuance of license. In this case license was not fake but was given when workman was under age. Section 4

of Motor Vehicle Act, 1988 says only age limit for driving different type of vehicle on road and not for issuance of license by licensing authority. The driving license was not cancelled by the, licensing authority Dibrugarh (Assam), and by licensing authority Karnal who renewed the same in the year 1993 after verification from original issuing licensing authority Dibrugarh (Assam). He further placed reliance on citation **Commissioner of Police & Others Versus Mukesh Kumar & Another, 2001(94) DLT 691 (Delhi) (DB)** wherein it is held that license issued when person was under age but renewed when person has attained prescribed age and license have not been cancelled by statutory authority who issued and renewed the same the license cannot be declared invalid. Further in citation **Commissioner of Police Versus Naseeb Singh, 2002(1) RCR (Civil) 637 (Delhi) (DB)** in which driving license obtained by underage person and appointment cancelled on that ground. The applicant stated that he had attained age when he applied for the post. Since license was not cancelled by statutory authority under the Motor Vehicle Act so license cannot be declared invalid and applicant is eligible to be considered for the post of driver. It is further argued that as regards findings of MACT is not binding and conclusive to prove the allegation against workman. He referred to **State of Punjab & Others Versus Mohanjit Singh, RSA No.4399 of 2017 (O&M) decided on September 13, 2017** wherein Hon'ble Punjab & Haryana High Court had held that the driver cannot be held guilty only on the basis of findings given by MACT. In the year 2003 State of Haryana instructed to all the drivers Haryana Roadways to obtain license from licensing authorities of State of Haryana whosoever have obtained during license from out of State. Along with other workman also obtained fresh license from State of Haryana, copy of which Exhibit 'W-5'. He prayed for deciding both these issues in favour of the workman.

14. On the other hand, learned Assistant District Attorney for the management has examined Shri Harpreet Singh - Clerk as MW1, who deposed that the workman was appointed and joined on contractual basis as Special Driver No.165 on 06.07.1994 on 89 days basis. After completion of two years contractual service, his services were regularised in terms of Transport Commissioner, Haryana Memo No.1224-45/A-2/E-3, dated 23.03.1998. He also deposed that on 31.01.2000, the workman was performing duty with bus No.HR-37-7036 on Kalka-Delhi route and due to his rash & negligent driving, the bus met with an accident with Maruti car resultantly two persons died at the spot and the bus was badly damaged. An FIR No.279/304-A under IPC was lodged in Thana Tanesar. A claim petition was filed by the dependents of deceased persons before the MACT, Rohtak against the State including the workman, which was decided in favour of the petitioners and against the respondents. The services of the workman were terminated *vide* order No.3063/ECD dated 17.12.2002. The workman filed an appeal before Transport Commissioner, Haryana, which was rejected *vide* order dated 19.06.2003. Thereafter the workman filed civil case in the Court of Civil Judge, Chandigarh for reinstatement of his services. The same was decided in favour of the workman. The department filed a Civil Appeal No. 43 of 13.02.2008 against the judgment and decree passed, which was decided on 25.10.2010 directing the management to hold a fresh inquiry including the charges as to whether the workman was holding a valid driving licence or not at the time of accident. In compliance of the said order, a fresh charge sheet *vide* memo No.5451/ECD, dated 08.03.2011 was served upon the workman and after holding proper department inquiry, it was found that the licence of the workman was fake as he had obtained the same at the age of 17 years. He further deposed that according to provisions of MV Act, 1998 Section 4(1) a person can hold a heavy Transport Vehicle Licence at the age of 20 years. The MACT declared his licence fake and passed a claim against the department despite the bus involved in the accident was insured at the time of accident. The Department suffered a loss of ₹ 11,07,773/- due to fake and invalid driving licence possessing at the time of accident by the workman. After completing fresh inquiry termination order dated 12.09.2011 was

passed. The workman went in RSA No.929 of 2011 against judgment of Additional District Civil Judge, Chandigarh before the Hon'ble Punjab & Haryana High Court at Chandigarh which was decided on 08.08.2016 with a direction to the department to release the subsistence allowance from time to time from the date of termination till the date of passing final orders in fresh inquiry. In compliance of order of Hon'ble High Court, the workman had already been given the benefit of subsistence allowance. The appeal of the workman has already been rejected by the Director State Transport, Haryana *vide* order bearing Endorsement No.316-18/2019/A-6/E-3, dated 01.08.2019.

15. Learned Assistant District Attorney for the management has argued that the workman was appointed as Driver on contractual basis on 06.07.1994 on 89 days basis and after completion of two years, his services were regularized in terms of the Transport Commissioner, Haryana memo No. 1224-45/A2/E3, dated 23.03.1998. On 31.01.2000, he was performing duty with bus No.HR-37-7036 on Kalka to Delhi route and due to his rash and negligent driving the bus met with an accident with a Maruti Car resulting which two persons died. A claim petition was filed by the dependents of the deceased persons before the MACT, Rohtak which was decided in favour of the petitioner and against the respondents on 22.03.2001. Copy of the judgment and award of the learned Motor Accident Claims Tribunal, Rohtak dated 22.03.2001 is Mark 'MX1'. The bus was insured with the National Insurance Company under the policy No.67011090 at the time of accident but due to the illegal and invalid driving licence possessed by the workman, the department has been burdened with ₹ 11,21,733/-. Copy of the same is Exhibit 'D1' and Mark 'A' & 'B'.

16. On the basis of the judgment of the MACT a charge-sheet under Rule 7 of Haryana Civil Service (P&A) Rules 1987 *vide* General Manager, Haryana Roadways, Chandigarh memo No.11038/ECD, dated 08.05.2000 for rash and negligent driving was issued to the workman. After completion of the inquiry charges were duly proved and the punishing authority issued a show cause notice to which the workman filed reply and the same was duly considered by the punishing authority. The workman was heard personally. His services were legally terminated *vide* order No.3063/ECD, dated 17.12.2002 by General Manager, Haryana Roadways, Chandigarh.

17. It is further argued that as per direction issued by the Court of Sh. Gian Chand Garg, Additional District Judge, Chandigarh *vide* order dated 25.10.2010 a fresh charge sheet *vide* memo No.5451/ECD, dated 8.3.2011 including a charge of fake licence to the workman was issued. After completion of the proper and fair enquiry, his services were again terminated *vide* Endorsement No.16753-54/ECD, dated 12.09.2011. It is argued that after holding a fair & proper regular departmental enquiry, it has been proved that the said driver had fake driving licence because he has obtained the heavy driving licence under the age of 17 years, but according to the provisions of the Motor Vehicle Act 1988, Section 4, Clause 2 a person can hold the heavy transport vehicle licence in the age of 20 years, so the licence of the driver was invalid and MACT, Rohtak has declared his licence as illegal and due to the illegal licence the department has burdened with ₹ 11,21,733/-.

18. It is further argued that the appeal against the above said orders has also been decided by the Director General State Transport, Haryana *vide* its order endst. No.316-18/2019/A6/E3, dated 01.08.2019 Exhibit 'AM11'. So the claim of the workman is not tenable as his licence was not valid and it was obtained by him in an illegal manner and the competent authority has conducted the inquiry in the matter whether the workman is having valid driving licence or not so in the inquiry dated 08.03.2011, it was found that he had obtained the heavy driving licence under the age of 17 years and his driving licence is not a valid. Copy of

report is Exhibit 'D2'. After the workman acquitted of the criminal case cannot be absolve him of all the proceedings. Moreover, the burden to prove the case on the prosecution is more and beyond reasonable doubt. The workman has been granted every opportunity of being heard. He has placed reliance on citation **State Bank of India Versus Attindra Nath Bhattacharya Ji, 2020(164) FLR 77/2020 (5 ALL 653)**. He also referred to paragraph No.27 of the judgment dated 22.03.2001 of the Motor Accident Claim Tribunal and he also relied upon citation **Vijay Kishanrao Kurundkar & Another Versus State of Maharashtra, AIR 2020 SC 3715** so both these issues be decided against the workman and in favour of the management.

19. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed as Driver on contractual basis on 06.07.1994 for 89 days basis and after completion of two years his service were regularized in the terms of Transport Commissioner. Admittedly he was performing his duty with bus No. HR-37-7036 enroute Kalka to Delhi and the said bus met with accident and FIR No.30 of 31.01.2000 was registered against the workman. Admittedly, trial Court of JMFC, Kurukshetra acquitted the workman. Copy of judgment is Exhibit 'W1' and it is also not disputed that the MACT claim has been filed and copy of judgment and award dated Mark 'MX1' in which the award was passed of ₹ 11,21,733/-. Further a charge sheet was issued by the department on 08.05.2004 for rash & negligent driving and on 11.11.2002 the workman was personally heard by the General Manager, Haryana Roadways and his services were terminated on 17.12.2002.

20. After perusal of the oral & documentary evidence on record it is crystal clear that against the order of termination dated 19.06.2003 the workman filed civil suit in Civil Court at Chandigarh and that suit was decreed in favour of the workman and order of termination was declared as illegal and the workman was ordered to be reinstated *vide* judgment & decree dated 02.01.2008. Against the decree dated 02.01.2008 the management filed appeal which was partly allowed on 25.10.2010 and the appellate Court gave direction to the respondents to hold fresh inquiry by including the charge "*Whether the workman was holding valid driving license at the time of accident on 31.01.2000?*" and to conclude the fresh inquiry within six months from the date of receipt of certified copy of judgment. Thereafter the workman filed RSA No.929 of 2011 (O&M) in which it is clearly held in paragraph No.8 of the judgment that the appellant has not questioned the remanding the matter in the present appeal. His appeal is restricted only regarding payment of salary for the intervening period. Therefore, the appellate Court order dated 25.10.2010 to the extent of remanding the matter to the department is upheld. Consequently, the appellant was subject to disciplinary proceedings afresh and matter was concluded by imposing penalty of dismissal from service. Further in paragraph No.9 of the said judgment it is held that in view of the facts & circumstances and principle laid down in the case titled as **Managing Director ECIL Versus B. Karunakaram reported in 1993(4) SCC 727**, the appellant is entitled only for subsistence allowance for the reason that as and when order of termination is set aside and matter is remanded for fresh inquiry, the petitioner would be deemed to be under suspension till a final order is passed in the disciplinary proceedings.

21. Hence, in compliance of order of Hon'ble High Court the appellant/workman was given subsistence allowance *vide* Exhibit 'AM-10' and it is also crystal clear that the appellant-workman has not challenged the order of termination dated 12.09.2011 before the Hon'ble High Court and appeal order dated 25.10.2010 to the extent of remanding the matter to the department has already been upheld. Meaning thereby the workman has already approached earlier before the Civil Judge, Chandigarh then its appeal went to the Learned Additional District Judge, Chandigarh and then RSA filed before the Hon'ble High Court and matter has already been

decided upto Hon'ble High Court. As per directions issued by the appellate Court, a fresh charge sheet including a charge of fake licence was issued to the workman and after completion of proper & fair inquiry and after giving all the reasonable opportunities to be heard his service again terminated *vide* endorsement No. 16753-54 ECD, dated 12.09.2011.

22. Further in the fresh inquiry, the workman was given all reasonable and fair opportunities and all the due procedure of law has been followed in conducting the inquiry in a fair & transparent manner. So the arguments of learned representative for the workman that proper procedure has not been followed, no opportunity of personal hearing was given, copy of inquiry report was not supplied does not inspire the confidence so citations referred with material collected at the back of delinquent **Manjit Singh Versus State of Haryana & Others** and **State of Assam & Another Versus Mahendra Kumar Das & Others (Supra)** do not held good.

23. Further **Union of India & Others Versus Mohd. Ramzan Khan, Sadhu Ram Versus State of Punjab** and **Parminderjit Singh & Others Versus Shiromani Gurudwara Prabandhak Committee, Amritsar through its Secretary & Others (supra)** are not applicable while deciding the present in hand as these citations are with regard to non-supply of inquiry report whereas in the present case in hand the workman has failed to prove on record that he had written to competent authority or higher authorities regarding non-supply of inquiry report to him for making representation thereof whereas the opportunity of personal hearing was duly given to the workman. Reliance is placed on citation of Hon'ble Supreme Court titled **State Bank of India Versus Attindra Nath Bhattacharya Ji (supra)** in which it is held that opportunity of hearing granted, he cannot be granted another opportunity for the sake of justice.

24. Further appeal against the order dated 12.09.2011 has already been decided by the Director General, State Transport *vide* order bearing endorsement No.316-18/2019/A6/E3, dated 01.08.2019 in which the workman has been called for personal hearing and the appeal has been rejected. Hence, proper procedure has been conducted by the department and fair inquiry has been conducted by the department and the workman has already availed all the remedies available to him by filing appeal to the appellate authority, civil suit and approaching the Hon'ble High Court.

25. In the light of discussion made above, it is held that the workman has failed to prove that his services were terminated illegally by the management and the present reference is maintainable. Accordingly, both these issues are decided against the workman and in favour of the management.

Relief :

26. In the light of findings on the issues above, this reference is declined and answered against the workman. Appropriate Government be informed. File be consigned to the record room.

The 28th May, 2021.

(Sd.). . .,

(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095

Secretary Labour,
Chandigarh Administration.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 5th May, 2021

No. 67/E.I./V.D.I (3E).—Hon'ble the Chief Justice has been pleased to make the following promotion on the establishment of this Hon'ble Court in the Pay Band of ₹ 15600-39100/- plus Grade Pay of ₹ 7600/- plus usual allowances with effect from 04.05.2021 :—

Sr. No.	Name of the Officer	E.Code	From	To	Remarks
1	Ms. Shivani Kaushik	4056	Offg. Secretary	Offg. Special Secretary	Against vacant post

BY ORDER OF HON'BLE THE CHIEF JUSTICE

(Sd.)...,

(NARENDER SINGH),
Registrar (Administration),
for Registrar General.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 5th May, 2021

No. 68/E.I./V.D.I (3E).—Hon'ble the Chief Justice has been pleased to make the following promotions on the establishment of this Hon'ble Court in the Pay Band of ₹ 15600-39100/- plus Grade Pay of ₹ 6600/- plus usual allowances with effect from 04.05.2021 :—

Sr. No.	Name of the Officer(s)	E.Code	From	To	Remarks
1	Sh. Yag Dutt	5864	Offg. Private Secretary	Offg. Secretary	Against vacant post
2	Sh. Yogesh Sharma	5862	-do-	-do-	-do-

BY ORDER OF HON'BLE THE CHIEF JUSTICE

(Sd.)...,

(NARENDER SINGH),
Registrar (Administration),
for Registrar General.

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